

PT 99-21

Tax Type: PROPERTY TAX

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

BARRY UNIT SCHOOL DISTRICT #1)		
Applicant)	Docket #	95-75-3
)		
v.)	Parcel Index #	46-66-11
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: H. Allen Yow of Rammelkamp, Bradney, Kuster, Keaton, Fritsche and Lindsay, P.C., for Barry Community Unit School District No. 1.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois on June 16, 1998 to determine whether or not Pike County Parcel Index No. 46-066-11 qualified for exemption during the 1995 assessment year.

Dr. Shari Marshall, Superintendent of Barry Unit School District #1 (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during all or a portion of the 1995 assessment year; secondly, what section of the statutes might apply to grant this applicant a property tax exemption and lastly, whether this parcel was used by the applicant for exempt purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel

from January 5, 1995 through December 31, 1995 or for 99% of the 1995 assessment year. It is also determined that the applicant is a school district and the appropriate statutory provision is found at 35 ILCS 200/15-135. Finally, it is determined that the applicant did not use the property for exempt purposes for the portion of the 1995 assessment year that it owned the property.

Findings of Fact:

1. The jurisdiction and position of the Department that a Pike County Parcel Index No. 46-66-11 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 11)

2. On June 6, 1996, the Department received a property tax exemption application from the Pike County Board of Review for Permanent Parcel Index No. 46-066-11. The applicant had submitted the request, and the board recommended that the Department deny the exemption for the 1995 assessment. The board noted on the application “[t]he house on the property is currently being used as a home for the superintendent who is paying rent.” The Department assigned Docket No. 95-75-3 to the application. (Dept. Grp. Ex. No. 2)

3. On August 29, 1996, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Springfield, Illinois, on June 16, 1998, was pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject property by an executor's deed dated January 5, 1995. (Dept. Ex. No. 2 pp. 4 - 6)

7. The exemption application at No. 10 requests that the applicant describe the specific activities that take place on the property. The applicant responded: “vacant building and grounds intended for future school use by the District.” (Dept. Ex. No. 2 p. 1)

8. Located on the subject parcel is a 19,840 square foot one-story house with a basement. The parcel is commonly known as 446 Perry, Barry, Illinois. The property is adjacent to applicant's High School and across from the gym. (Dept. Ex. No. 2 pp. 1, 3; Tr. p. 14)

9. The house on the subject parcel needed kitchen cabinets and termite/spider control. The cost for the two items including labor and materials was \$5,682.63. The superintendent moved to the school district area with the understanding that the house would be provided to her for the first three years the applicant employed her, and that she would reimburse the applicant in monthly payments of \$200.00. The checks written to the applicant by the superintendent for the periods of August 1995 through March 1996 have "rent" written in the memo field. There is a housing shortage in the area. (Dept. Ex. No. 4 pp. 2 – 5; Applicant's Ex. Nos. 1 & 2; Tr. pp. 14-17, 23-26, 31)

10. From January 5, 1995 through July 1, 1995 the house was primarily vacant. A few art background backdrops were stored there. The house needed renovation before the superintendent moved in. (Tr. pp. 16-23, 28-29)

11. I take administrative notice of the fact that the Department granted the applicant an exemption for this parcel in 1997 pursuant to Docket No. 97-75-16. The applicant stated on that application that the property was being used for storage. The Board of Review recommended granting that application.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional enabling provision, the legislature has enacted exemptions from property taxation. At issue is the exemption found at 35 **ILCS** 200/15-135, which grants school districts and college districts an exemption. The statutory provision states: “[A]ll property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.”

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

While I appreciate that the applicant sent a copy of the determination of the Department regarding this property in 1997, that is not determinative of the matter before me. A cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for other years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980).

The applicant in its brief asserts that the applicable statutory provision is found at 35 **ILCS** 200/15-35(b), which states:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to

profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any State of the United States. Also exempt is: . . .

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities and school owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

One of the primary rules of statutory interpretation is that a specific statutory provision controls as against a general provision on the same subject. The People v. C. & T. R. R., 364 Ill. 329 (1936). As there is a specific statutory provision for exemptions for school districts, found at 35 **ILCS** 15/200-135, I find that exemption provision is the applicable statute for this matter.

In Stevens v. Rosewell, 170 Ill.App.3d 58 (1st Dist. 1988) *leave to appeal denied*, the Appellate Court discussed the factors to be considered in what comprised a lease. The court found that an agreement created a leasehold interest when it defines the bounds of the property and is for a definite and agreed term at a definite rental price. Here the superintendent lived in the house on the subject property for two years and paid an agreed rent of \$200.00 per month.

In Turnverein “Lincoln” v. Bd of Appeals, 358 Ill. 135 (1934), the Illinois Supreme Court, citing People v. Withers Home, 312 Ill. 136, stated “that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” *Id.* at 144 .

I therefore find that the superintendent leased the house on the subject parcel for \$200 per month for the period of July 1, 1995 through December 31, 1995.

In addition to arguing that the applicable statutory provision is found at 35 **ILCS** 200/15-35(b), the attorney for the applicant in its brief argues that the Court’s holding in People v. McKendree College, 4 Ill.App.3d 504 (5th Dist. 1972) (hereinafter referred to as McKendree College) is pertinent to this case. He states that the case stands for the proposition that a building that was occupied by the president of the college and his wife was primarily used for the purposes which were reasonably necessary for the accomplishment and fulfillment of the

educational objectives of the college and was granted a property tax exemption under the school exemption provision. I have a few problems with relying on McKendree College. For one, it was decided under 35 **ILCS** 200/15-35 not 35 **IICS** 200/15-135. Secondly, the last sentence of the opinion in McKendree College states “We therefore affirm the judgment of the trial court in compliance with Illinois Supreme Court Rule 23.” *Id.* at 505. Illinois Supreme Court Rule 23, adopted effective January 31, 1972, states:

Signed memorandum opinions may be used in affirming a judgment when the Appellate Court determines that no error of law appears, that an opinion would have no precedential value, and . . . Ill. Rev. Stat. Ch. 110A § 23 (emphasis added)

I therefore find that McKendree College is not a controlling case in this matter.

The attorney for the applicant in his brief also refers to Knox College v. Illinois Department of Revenue, 169 Ill.App.3d 832 (3rd Dist. 1988) (hereinafter referred to as Knox College) and states that “unused properties that are surrounded by exempt properties may still be held to be part of the regular operation of the school.” Knox College was decided under the exemption language found at Ill. Rev. Stat. 1985, ch. 120, par. 500.¹ which necessitates that property be used exclusively for school purposes and is not the statutory provision at issue. In Knox College students used the vacant land for recreational purposes. The court said “that open spaces serving as a campus lawn are an integral part of a college campus.” *Id.* at 838. The parcel at issue is not vacant lawn that forms part of the school campus and I therefore find Knox College distinguishable.

I do find that the Illinois Courts have addressed the fact that an unused building did not qualify for a property tax exemption in Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983) In that case, the Illinois Appellate Court found that the church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. I find those circumstances similar to the use of the house on this parcel during the period of January 5, 1995

¹ Currently found at 35 **ILCS** 200/15-35.

through July 1, 1995. Regarding the incidental use of storage of art backdrops, the Illinois Supreme Court in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971) stated that it is the primary use of property, rather than any incidental use, that determines whether a parcel will be granted a property tax exemption.

For the period of January 5, 1995 through July 1, 1995, I find that the subject parcel and the house thereon were vacant and unused by the applicant. For the period of July 1, 1995 through December 31, 1995, I find that the parcel was rented to the superintendent of the applicant for \$200.00 per month rent and therefore leased.

Based upon the foregoing, I recommend that Parcel index No. 46-66-11 remain on the Pike County tax rolls for the period of January 5, 1995 through December 31, 1995.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
February 24, 1999